

IN THE MATTER OF : BEFORE THE HOWARD COUNTY
AUTO SUPREME, INC. : BOARD OF APPEALS
Petitioner : BA Case No. 07-033N

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DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on June 12, 2008 and July 10, 2008, to hear the amended petition of Auto Supreme, Inc., Petitioner, for the confirmation and enlargement of a nonconforming use for a motor vehicle sales facility located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District. The petition was filed pursuant to Sections 129.D and 129.E of the Howard County Zoning Regulations (the "Zoning Regulations").

All five Board members were present at the June 12th hearing and four Board members were present for the July 10th hearing. Chairperson Albert Hayes presided at both hearings. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner certified that notice of the hearing was advertised and the property was posted as required. Each of the participating Board members indicated that they had viewed the property as required by the Zoning Regulations.

The case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. Pursuant to that Section, the following were incorporated by reference into the record:

1. The Howard County Code;
2. The Howard County Charter;
3. The Howard County Zoning Regulations;
4. The Recommendation of the Department of Planning and Zoning dated January 9, 2008;

5. The June 17, 2008 letter captioned: In the Matter of Auto Supreme, Inc., BA Case No. 07-033N submitted by Talkin & Oh, LLP;
6. The Howard County Board of Appeals Hearing Examiner Decision and Order in BA Case No. 07-033N;
7. The General Plan for Howard County;
8. The General Plan of Highways, and
9. The Petition and Plat and materials submitted with it.

The Petitioner was represented by Sang W. Oh, Esquire. Gregory Smith testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearings, the Board makes the following Findings of Fact:

1. The subject property, known as 9551 Washington Boulevard, is located in the 6th Election District approximately 430 feet northeast of Maier Road (the "Property"). The Property is identified on Tax Map 47, Grid 23, as Parcel 538.
2. The rectangular Property is improved with a 680-square foot, one-story frame building and deck situated in the parcel's southwest corner and a 1,200-foot, one-story modular double office trailer situated in the Property's northeast corner. About two-thirds of the Property to the north of the frame building is an open paved area, which also surrounds this structure. This area is used for vehicle display, storage, and parking. The eastern section is wooded and a stream runs through the back section. A wide, nonstandard driveway provides entrance to the Property near its northwest lot side.

3. The Property is the site of a motor vehicle sales facility. Until the 2004 Comprehensive Zoning Plan (the "2004 CZP"), the Property was zoned M-2 (Manufacturing: Heavy), which permitted motor vehicle sales facilities as a matter of right. When the 2004 CZP ultimately became effective on July 28, 2006, the CE-CLI zoning was applied to the Property. Although the initial effective date of the bill was April 13, 2004, a petition for referendum on the CZP by Howard County voters suspended the effect of the bill and the Court of Special Appeals invalidated the petition on July 28, 2006, the ultimate effective date.

4. The Petitioner requests confirmation of a nonconforming use for a motor vehicle sales use on the Property, giving the date of nonconformance as April 2004. As documentation of the use's existence before 2004, the Petitioner included in the petition two zoning approval forms for used car sales on the Property, one from 1999 and the second from 2002. Mr. Gregory Smith testified that the Property has been continuously used for the same purpose since 2004.

5. The Petitioner initially requested retroactive approval of an enlargement of the nonconforming use through the addition of a 24-foot by 50-foot modular office trailer shown on the Nonconforming Use Plan, however, the Petitioner *amended* this request by reducing the size of the sales trailer from 1,200 square feet to 684 square feet or smaller in order to conform to the 100% maximum enlargement requirement under the Zoning Regulations.

6. Vicinal properties are similarly zoned CE-CLI. To the north is an electric utility transmission right-of-way. To the east are Parcels A and B-6, unimproved lots fronting on Bursa Road. Adjoining the southwest side lot line is Parcel 539, which is improved with a one-story brick and frame building and a one-story frame building used in relation to motor vehicle sales. To the west, across US 1, are a storm-water management pond and a self-storage facility.

7. US 1 is depicted as an Intermediate Arterial Highway on the Transportation Map 2000-2020 of the 2000 General Plan. US 1 has two northbound and two southbound travel lanes with a variable pavement width within a proposed 150-foot wide right-of-way. The posted speed limit is 50 miles per hour.

8. The Property is designated Employment Areas and Redevelopment Corridor on the Policies Map 2000-2020 of the 2000 General Plan.

9. The site will be served by public water and sewer facilities.

10. According to the Department of Planning and Zoning Technical Staff Report (the "TSR"), the motor vehicle sales use is clearly depicted on the County's 1999, 2002, 2004, and 2006 aerial photographs and the 1999 Land Use Plan designates the Property as a "Motor Vehicle Repairs and Sales" use.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as follows:

A. Confirmation of Nonconforming Uses (Section 129.D)

1. A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of those regulations or as a result of any subsequent amendment thereto. Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the time of the zoning change and has continued uninterrupted since that date.

2. In this case, the Petitioner and the TSR have presented uncontroverted evidence in the form of documentation that the Property has been used as a vehicle sales facility since at least July 28, 2006, the effective date of the 2004 comprehensive zoning plan, which rezoned the Property from its M-2 zoning designation to CE-CLI. The depiction of the Property's uses on the 2004 and

2006 aerial photographs and the 1999 Land Use Plan designation leads the Board to conclude that the use depicted in the petition and nonconforming use plan submitted by the Petitioner is nonconforming in accordance with Section 129.D.

B. Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.E)

1. The Petitioner seeks approval to enlarge the nonconforming use through the construction of a 684-square foot or smaller modular office structure on the Property. The additional office space to the nonconforming motor vehicle sales use would not change the use in any substantial way, in accordance with Section 129.E.1.a.

2. Based upon the 684-square foot frame building on the Property, an additional 684-square foot trailer represents a 100 percent increase in gross floor area above that which legally existed at the time the use first became nonconforming. The enlargement will not exceed 100 percent of the gross floor area of structures above that which legally existed at the time the use first became nonconforming, in accordance with Section 129.E.1.b.

3. No additional parking is proposed; therefore, Section 129.E.1.c. is not applicable.

4. The entire structure will be located in compliance with the required setbacks, in accordance with Section 129.E.1.d.

5. The proposed enlargement to the building represents a minor increase in size. No additional activities, noise or lighting are proposed in the petition. The enlargement will not cause an adverse effect on vicinal properties, in accordance with Section 129.E.1.e.

ORDER

Based upon the foregoing, it is this 28th day of August, 2008, by the Howard County Board of Appeals, **ORDERED**:

1. That the Amended Petition of Auto Supreme, Inc., for the confirmation of a nonconforming use for motor vehicle sales facility located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District is hereby **GRANTED**;

2. That the Amended Petition of Auto Supreme, Inc., for the enlargement of the nonconforming use for a motor vehicle sales facility by adding a modular office structure with 684 square feet or less in size located in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District is hereby **GRANTED**;

Provided, that the modular office structure enlargement shall not exceed 684 square feet in size.

ATTEST:

Ann Nicholson
Ann Nicholson, Secretary

HOWARD COUNTY BOARD OF APPEALS

Albert Hayes
Albert Hayes, Chairperson

James Walsh
James Walsh, Vice Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
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Did not participate
Michelle James